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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

Although there is general agreement that various features of the present system of intercarrier compensation need revision, comments reflect an unusually sharp split between the majority of parties opposing adoption of a Bill and Keep system and those supporting it. Opposition comes from both parties concerned with the serious impacts on end users and from IXCs who nevertheless seek major changes in the present system.

Given the well founded opposition of the great majority of the telecommunications industry, except for a few large carriers, to adoption of either of the Bill and Keep proposals, it should be clear that other means must be found to address the legitimate issues surrounding the disparities in inter-carrier compensation. It should also be clear that the proposals were too incomplete to have been released in an NPRM and that it is not possible for rural carriers, especially, to adequately comment on further access reform when they have not even seen, much less had experience with, the Commission's MAG Order.

Further inquiries into long term solutions should be structured to ensure continued compliance with the affordability and comparability provisions of the Act, and be based on a federal state consensus.

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REPLY COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA') submits its Reply Comments in response to the comments of other parties filed August **2**1, 200**1.** RICA is an alliance of competitive local exchange carriers ("CLECs") operating in rural areas and affiliated with Rural Telephone Companies.

Although there is general agreement that various features of the present system of intercarrier compensation need revision, the comments reflect an unusually sharp split between the majority of parties opposing adoption of a Bill and Keep system and those supporting it. Opposition comes from both parties concerned with the serious impacts on end users and from IXCs who nevertheless seek major changes in the present system. Given the broad base of opposition, it is apparent that the Commission must rethink its approach. In these reply comments, RICA will highlight a few critical issues which must be resolved in whatever approach evolves through this effort.

I. THERE IS BROAD AGREEMENT THAT ELIMINATION OF ACCESS REVENUES COULD HAVE A SIGNIFICANT ADVERSE IMPACT ON RURAL SUBSCRIBERS

RICA's Comments emphasized that adoption of a Bill & Keep approach to intercarrier compensation which did not provide a substantial replacement for access revenues would have a significant adverse impact on rural CLECs and their subscribers.[1] An unusually broad spectrum of comments agreed that the proposals before the Commission would result in major increases in local rates which makes the proposals unacceptable to the public.[2]

Sprint, for example, concluded that Bill and Keep should not be implemented for access services because of the significant local rate increases which would result.[3] The Regulatory Commission of Alaska estimates that applying bill and keep to interstate access would increase end user rates by over $20 per month for a third of the rural telephone companies in the state.[4] Century emphasized the real threat of rate shock to subscribers, noting it would loose $180 per line per year.[5] Alltell points out that "In certain circumstances the impact will likely be so severe that the current universal service mechanisms will not be able to absorb the impact, both in terms of the sufficiency of support and in terms of maintaining equitable contributions."[6]

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1 CLEC interstate access rates are now "benchmarked" to ILEC rates following the Commission's Seventh Report and Order in CC Doc. No. 96-262.

2 NECA at 5, (shift to end users of rate of return LECs of $1.5B, or $9.80/month on average); NTCA at 9-10; GVNW at Apps B and D; Western Alliance at 8-9; Focal at 41; Time Warner Telecom at 25.

3 Sprint at 22.

4 Regulatory Commission of Alaska at 2.

5 Century at 6.

6 Alltell at 13.

NASUCA agrees with RICA that Bill and Keep is conceptually the same as the Board-to-Board system rejected by the Supreme Court in 1930.[7] NECA reaches a similar conclusion.[8]

BellSouth's contention, at 16, that consumers will benefit from a shift of costs to their basic monthly charges because they will then have "better control of their telecommunications expenditures," while an ingenious "spin" to its "rate rebalancing" campaign, has the effect exactly backward. By increasing mandatory charges and decreasing optional charges, the consumer has less control–unless abandoning service is considered control. Bill and Keep would "wrest control over telecommunications costs away from subscribers, because they would no longer be able to reduce costs by choosing to place fewer calls."[9]

Whatever change is made in the manner in which costs are recovered, the need to recover costs in a manner that satisfies the affordability and comparability requirements of the Act does not go away.[10] Whether access revenues are eliminated by defining them out of existence, or by defining the underlying costs to be less than an appropriate allocation of the actual, real costs of providing service, the practical effects on end users rates are similar.[11] RICA therefore opposes the position of AT&T and others that access charges should be set to recover costs as defined by

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7 NASUCA at 27.

8 NECA at 12.

9 See, Comptel at iii.

10 As the New York Public Service Commission noted the probable result of a mandatory move to Bill and Keep "will be higher monthly subscription charges (higher local rates, higher federal subscriber line charges, or both), making them less affordable, less comparable between rural and urban areas, and less conducive to universal service." NYPSC at 2.

11 California Public Utilities Commission at 7, "...[S]witched access charges should continue to recover all costs of providing access, including a reasonable allocation of joint and common costs."

TELRIC.[12] However the Supreme Court decides the pending TELRIC case, for the reasons stated by Verizon and others, TELRIC is not an appropriate method of defining cost of providing access.[13] The Texas Office of Public Utility Counsel correctly notes that large ILECs have a much greater ability to absorb increases in end user charges than do CLECs, and the ability and incentive to distribute those increases in a manner most detrimental to competing CLECs.[14]

II. MANY PARTIES SUPPORT REDUCING REGULATORY ARBITRAGE WITHOUT ELIMINATING INTERCARRIER ACCESS CHARGES

RICA's Comments emphasized that while elimination or, at least, reduction of regulatory arbitrage was an important goal in this proceeding, there are other means to control this problem which do not have the negative aspects of Bill and Keep. Several parties point out how Bill and Keep would not eliminate arbitrage, and would generate new opportunities to abuse the system. For example, where there is a substantial advantage to being a carrier, instead of a customer, many customers will transform themselves into "carriers."[15]

Global Crossing argues that the future is in "packets, not minutes," i.e., telecommunications is evolving from circuit switching to internet protocol.[16] If this projection is valid, RICA's point that the enhanced service provider exemption is a major source of arbitrage which should be eliminated is even more valid.

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12 AT&T at **52-53.**

13 ***Accord*** USTA at **30-31.**

14 TOPUC at **45-47:** "...ILECs can selectively raise certain rates - ***in regions or for customer classes where competition is absent*** - and keep other rates - ***in regions or for customer classes where they do face competition*** – relatively stable. By contrast, most CLECs have a far smaller and more homogeneous customer base, ***all of which is subject to competition." See also,*** Comptel at **17.**

15 Maryland Office of the People's Counsel at **2-3.**

16 Global Crossing at **4.**

Others mention state-interstate differences as a major avenue for arbitrage.[17] The solution to the state-interstate issue is not to find a means to bypass section 410 of the Act and shift all costs to the state jurisdiction, but to work with the states to develop a legislative proposal which fairly balances all the issues.

III. THE COMMISSION'S AUTHORITY TO REQUIRE BILL AND KEEP FOR INTRASTATE ACCESS IS HIGHLY QUESTIONABLE

Many parties agreed with RICA's point the Commission does not appear to have authority to force states to adopt a bill and keep mechanism to replace intrastate access charges." There are a few parties who disagree, but even their positions are tentative, such as SBC Communications.[19] No party disagrees with RICA's assessment that it is probable that any such assertion of authority would be challenged in court with the resulting delays and expenses. The importance of having parallel state and interstate intercarrier compensation was also not challenged in the comments. As well stated by Verizon: "If the Commission is going to replace one source of cost recovery with another in pursuit of interstate intercamer compensation reform, it is essential that any state actions be coordinated and consistent with the Commission's actions. Separate state and federal rules on architecture or compensation would undermine efforts to eliminate inefficient arbitrage.""

Thus, if the Commission truly wants to proceed with a "reformed" approach to access, it should develop proposals which have the support of state regulators and seek a legislative solution to coordination.

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17 Worldcom at 17.
18 Worldcom at 3; NASUCA at 28-30.
19 Bell South at 28; SBC at 38-47.
20 Verizon at 15.

V. CONCLUSION

Given the well founded opposition of the great majority of the telecommunications industry, except for a few large carriers, to adoption of either of the Bill and Keep proposals, it should be clear that other means must be found to address the legitimate issues surrounding the disparities in inter-carrier compensation. It should also be clear that the proposals were too incomplete to have been released in an ***NPRM*** and that it is not possible to for rural carriers, especially, to adequately comment on further access reform when they have not even seen, much less had experience with, the Commission's MAG Order.

Further inquiries into long term solutions should be structured to ensure continued compliance with the affordability and comparability provisions of the Act, and be based on a federal state consensus.

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CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Independent Competitive Alliance" was served on this 5th day of November 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:

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